





1 Under the Act and the Commission's regulations, the political committee of a  
2 candidate for federal office must report debts for expenditures in excess of \$500 as of the date  
3 on which the debt is incurred.<sup>8</sup> If the political committee does not know the exact amount of  
4 the debt, then it must first report an estimated debt and later provide the correct amount that  
5 the committee owed for the services rendered.<sup>9</sup> Moreover, a candidate's political committee  
6 must identify individuals whose contributions to the committee aggregate in excess of \$200 in  
7 a calendar year.<sup>10</sup>

8 The ad ran during the third quarter of 2017, and, since the Committee requested an  
9 invoice from Powers, it appears the Committee intended to pay for it.<sup>11</sup> Thus, the Committee  
10 failed to timely report a debt, estimated or otherwise, that arose in connection with the ad.<sup>12</sup>  
11 Further, because Powers absorbed the costs of running the ad, not the Committee, the  
12 disclaimer on the ad ("Paid for by Friends of Dusty Johnson") was incorrect.<sup>13</sup>

13 Because the Committee ultimately reported the transaction, albeit in an untimely  
14 manner, and the amount at issue is modest, we recommend that the Commission dismiss the  
15 allegations consistent with the Commission's prosecutorial discretion to determine the proper

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<sup>8</sup> 11 C.F.R. § 104.11(b); *see also* 52 U.S.C. § 30104(b)(8) (requiring the disclosure of debt).

<sup>9</sup> *See* 11 C.F.R. § 104.11(b) (describing how to report estimated debt for expenditures). These reports must include estimated debts and in-kind contributions arising from the purchase or receipt of internet advertising. *See* 11 C.F.R. § 100.52(a) ("A gift . . . or deposit of money or anything of value . . . is a contribution."); 11 C.F.R. § 100.52(d)(1) (stating that "anything of value includes all in-kind contributions" including advertising services provided without charge); 11 C.F.R. § 100.111(a) ("A purchase . . . or gift of money or anything of value . . . is an expenditure."); 11 C.F.R. § 100.111(e)(1) (stating that "anything of value includes all in-kind contributions" including advertising services provided without charge).

<sup>10</sup> 11 C.F.R. § 104.7(b).

<sup>11</sup> Resp. at 1.

<sup>12</sup> The Committee was required to report the estimated cost of advertising in the third quarter of 2017 and then provide the correct amount when Powers provided the invoice. *See* 11 C.F.R. § 104.11(b).

<sup>13</sup> 11 C.F.R. § 110.11(b).





1 In response, the Committee concedes that Powers's blog ran ads for Johnson's campaign  
2 in the third quarter of 2017.<sup>4</sup> Johnson requested an invoice from Powers during the third quarter,  
3 and Powers sent a \$1,800 invoice to the Committee after the quarter ended. Powers also  
4 indicated that the advertisement was intended to be an in-kind contribution.<sup>5</sup> The Committee  
5 explains that it was not aware that Powers intended to run the ad as an in-kind contribution, and  
6 the Committee reported the ad as a \$1,800 in-kind contribution in its 2017 Year-End Report.<sup>6</sup>

7 **B. Legal Analysis**

8 Under the Act and Commission regulations, the political committee of a candidate for  
9 federal office must report debts for expenditures in excess of \$500 as of the date on which the  
10 debt is incurred.<sup>7</sup> If the political committee does not know the exact amount of the debt, then it  
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12 for the services rendered.<sup>8</sup> Moreover, a candidate's political committee must identify individuals  
13 whose contributions to the committee aggregate in excess of \$200 in a calendar year.<sup>9</sup>

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<sup>4</sup> Resp. at 1 (Feb. 16, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also Amended 2017 Year-End Report at 45 (Mar. 29, 2018), <http://docquery.fec.gov/pdf/921/201803299097932921/201803299097932921.pdf> (the report includes a receipt for in-kind advertising valued at \$1,800, attributed to Pat Powers, and dated December 15, 2017).

<sup>7</sup> 11 C.F.R. § 104.11(b); see also 52 U.S.C. § 30104(b)(8) (requiring the disclosure of debt).

<sup>8</sup> See 11 C.F.R. § 104.11(b) (describing how to report estimated debt for expenditures). These reports must include estimated debts and in-kind contributions arising from the purchase or receipt of internet advertising. See 11 C.F.R. § 100.52(a) ("A gift . . . or deposit of money or anything of value . . . is a contribution."); 11 C.F.R. § 100.52(d)(1) (stating that "anything of value includes all in-kind contributions" including advertising services provided without charge); 11 C.F.R. § 100.111(a) ("A purchase . . . or gift of money or anything of value . . . is an expenditure."); 11 C.F.R. § 100.111(e)(1) (stating that "anything of value includes all in-kind contributions" including advertising services provided without charge).

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5 on the ad (“Paid for by Friends of Dusty Johnson”) was incorrect.<sup>12</sup>

6           Because the Committee ultimately reported the transaction, albeit in an untimely manner,  
7 and the amount at issue is modest, the Commission dismisses the allegations consistent with its  
8 prosecutorial discretion to determine the proper ordering of its priorities and use of agency  
9 resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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<sup>10</sup> Resp. at 1.

<sup>11</sup> The Committee was required to report the estimated cost of advertising in the third quarter of 2017 and then provide the correct amount when Powers provided the invoice. See 11 C.F.R. § 104.11(b).

<sup>12</sup> 11 C.F.R. § 110.11(b).